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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,766	04/14/2004	Christopher T. Rich	P68778US1	4714

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EXAMINER	
PARSLEY, DAVID J	
ART UNIT	**PAPER NUMBER**
3643	

DATE MAILED: 08/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/823,766	RICH ET AL.	
	Examiner	Art Unit	
	David J. Parsley	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 July 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3 and 5-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3 and 5-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *14 April 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *7-7-05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Detailed Action

Amendment

1. This office action is in response to applicant's amendment dated 7-7-05 and this action is final.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 5, 11-14, 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,136,296 to Luin in view of U.S. Patent No. 3,852,384 to Bearden.

Referring to claim 1, Luin discloses a bird feeder comprising, a generally cylindrical housing – at 11, and a integral divider – at 34, and compartments for holding seed – see for example figures 1-2, the housing having a top and a bottom – see for example figures 1-2, a cover – at 14, for the housing top and a base – at 21-27 and 32, for the housing bottom having at least two vertically segregated feed chambers – see at 21 between items 32, each with separate feed openings – at 33, the feed chambers defined by radially extending dividers – at 32, formed within the base and separate from the housing – see for example figures 1-2, each feed chamber

in the base communicating with one of the divider elements – at 34, in the housing for seed to separately exit each the compartments through a respective feed chamber and out its opening – see for example figures 1-2. Luin does not disclose an integrally formed spiral divider, the spiral divider positioned vertically in the housing to divide the housing in at least two spiral compartments, which compartments extend continuously from adjacent the housing top to adjacent the housing bottom. Bearden does disclose an integrally formed spiral divider – at 23 and/or 24, the spiral divider positioned vertically in the housing – at 19-22, to divide the housing in at least two spiral compartments – see for example figures 2-5, which compartments extend continuously from adjacent the housing top to adjacent the housing bottom – see for example figure 2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Luin and add the spiral divider of Bearden, so as to allow for housing to be made into multiple equally proportioned chambers within the housing.

Referring to claim 2, Luin as modified by Bearden further discloses the spiral divider – at 23 and/or 24, divides the housing into three compartments – see for example figures 2-5 of Bearden.

Referring to claim 3, Luin as modified by Bearden further discloses the housing and the spiral divider are made of plastic – see for example column 4 lines 60-67 of Bearden. Luin as modified by Bearden does not disclose the plastic is transparent. However, it would have been obvious to one of ordinary skill in the art to take the device of Luin as modified by Bearden and add the plastic being transparent, so as to allow the user of the device to see the contents inside the device.

Referring to claim 5, Luin as modified by Bearden further discloses the radially extending dividers – at 32, are formed in a cylindrical coupler – at 24,26,28,29,31,35, connected to the housing bottom – see for example figures 1-2 and 4, the radially extending dividers dividing the coupler into three vertically segregated pie-shaped chambers – see at 21-22 in figures 1-2 and 4 of Luin.

Referring to claim 11, Luin as modified by Bearden further discloses the housing, the spiral divider, the cover and the base are all made from plastic materials – see for example column 4 lines 60-67 of Bearden.

Referring to claim 12, Luin discloses a bird feeder comprising, a generally cylindrical housing – at 11, with divider portions – at 34, a cap – at 14, covering the top of the housing – see for example figures 1-2, a cylindrical coupler – at 24,28,29,31,35, having an upper end frictionally engaged with the bottom of the housing – see for example figures 1-2, and having dividers – at 32, therein separate from the housing divider portions – see figures 1-2, which define vertically segregated coupler chambers – see at 21 in figures 1-2, each separately aligned with an exit of the dividers of the housing – see for example figures 1-2 and 4, to direct seeds separately from each of the compartments to an individual feed opening – at 33, associated with each coupler chamber – see for example figures 1-2, and a seed catcher – at 22, connected to the lower end of the coupler – see figure 4, on which birds may perch to eat seeds exiting from the coupler openings – see for example figures 1-2 and 4. Luin does not disclose the housing is plastic. Bearden does disclose the housing – at 19-22 is plastic – see for example column 4 lines 60-67. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Luin and add the housing being made of plastic of Bearden, so as to make the device

lightweight yet durable for use outdoors. Luin further does not disclose the divider portions define a plurality of spiral compartments which extend continuously from a top of the housing to a bottom of the housing. Bearden does disclose an integrally formed spiral divider – at 23 and/or 24, the spiral divider positioned vertically in the housing – at 19-22, to divide the housing in at least two spiral compartments – see for example figures 2-5, which compartments extend continuously from adjacent the housing top to adjacent the housing bottom – see for example figure 2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Luin and add the spiral divider of Bearden, so as to allow for housing to be made into multiple equally proportioned chambers within the housing.

Referring to claim 13, Luin as modified by Bearden further discloses the coupler dividers – at 32 of Luin, are generally vertical and equally spaced radially around the cylindrical coupler – see for example figures 1-2 and 4 of Luin.

Referring to claim 14, Luin as modified by Bearden further discloses the seed catcher includes a dished area radially outward of the cylindrical coupler for catching bird food which exits from the openings – see for example – at 21-22 in figures 1-2 and 4 of Luin.

Referring to claim 18, Luin as modified by Bearden does not disclose the plastic housing is transparent. However, it would have been obvious to one of ordinary skill in the art to take the device of Luin as modified by Bearden and add the plastic being transparent, so as to allow the user of the device to see the contents inside the device.

Referring to claim 19, Luin as modified by Bearden further discloses the housing is divided by the divider – at 23 and/or 24 of Bearden, into three spiral compartments – see for

example figures 1-4 of Bearden, and the coupler is divided into three segregated chambers – see for example at 21-22 in figures 1-2 and 4 of Luin.

Claims 6-8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luin as modified by Bearden as applied to claim 5 above, and further in view of U.S. Patent No. 5,558,040 to Colwell et al.

Referring to claim 6, Luin as modified by Bearden further discloses the coupler – in figure 4 of Luin, includes an upper end and a lower end – see figure 4 of Luin. Luin as modified by Bearden does not disclose a seed catcher attached to the lower end of the coupler to define a lowermost side of the feed openings. Colwell et al. does disclose a seed catcher – at 33 and/or 49, attached to the lower end of the coupler – at 35, to define a lowermost side of the feed openings – at 45,53 – see for example figure 3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Luin as modified by Bearden and add the seed catcher of Colwell et al., so as to allow for the seed to be fed and directed towards the feed openings.

Referring to claim 7, Luin as modified by Bearden and Colwell et al. further discloses the upper end of the coupler is frictionally engaged with the bottom of the housing – see for example proximate 24 and 31 in figures 1-2 and 4 of Luin.

Referring to claim 8, Luin as modified by Bearden and Colwell et al. further discloses the coupler includes an exterior baffle adjacent its upper end which serves to protect birds feeding on the seed catcher – see proximate 37 in figures 1-6 of Colwell et al.

Referring to claim 10, Luin as modified by Bearden does not disclose the cover for the housing top includes a dome cap with an integral downwardly depending circular flange which

removably engages the housing top. Colwell et al. does disclose the cover – at 25, for the housing top includes a dome cap – see at 81, with an integral downwardly depending circular flange – see at 79, which removably engages the housing top – at 27,29 – see for example figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Luin as modified by Bearden and add the cover of Colwell et al., so as to protect the seed from the outside elements.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Luin as modified by Bearden and Colwell et al. as applied to claim 6 above, and further in view of U.S. Patent No. 2,884,899 to Jackes et al. Luin as modified by Bearden and Colwell et al. does not disclose the lower end of the coupler includes downwardly depending elements with generally horizontally extending flanges which lockingly engage in corresponding slots of the seed catcher to retain the seed catcher in position underneath the coupler. Jackes et al. does disclose the lower end of the coupler – at 27, 33-39, includes downwardly depending elements – see figure 3, with generally horizontally extending flanges – see at 27,31,32,39, which lockingly engage in corresponding slots of the seed catcher – at 20,21,28-29, to retain the seed catcher in position underneath the coupler – see for example figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Luin as modified by Bearden and Colwell et al. and add the coupler of Jackes et al., so as to allow for the base structure to be securely held to the housing structure.

Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luin as modified by Bearden as applied to claim 12 above, and further in view of Jackes et al.

Referring to claim 15, Luin as modified by Bearden does not disclose the seed catcher is connected to the coupler by depending flanges from the coupler inserted into corresponding slots in the seed catcher. Jackes et al. does disclose the seed catcher – see 20-22, is connected to the coupler – at 27-38, by depending flanges – see at 27,31,32,39, from the coupler inserted into corresponding slots in the seed catcher – see for example figure 3. Therefore it would have been obvious to one of ordinary skill art to take the device of Luin as modified by Bearden and add the coupler of Jackes et al., so as to allow the seed catchers structure to be securely held to the housing structure.

Referring to claim 16, Luin as modified by Bearden does not disclose the seed catcher includes an upstanding central hub adapted to receive a cylindrical mounting post for supporting the bird feeder. Jackes et al. does disclose the seed catcher includes an upstanding central hub – at 33-38, adapted to receive a cylindrical mounting post – at 14, for supporting the bird feeder – see for example figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Luin as modified by Bearden and add the central hub and mounting post of Jackes et al. so as to allow for the feeder device to be securely held in place during use.

Referring to claim 17, Luin as modified by Bearden further discloses a carrier – at 36,37, for the bird feeder – see figures 1-2 of Luin, which extends above the cap and is connected to the coupler or the seed catcher to hang the bird feeder for support – see for example figures 1-2 of Luin. Luin as modified by Bearden does not disclose the carrier includes a component which extends through the cap and the housing. Jackes et al. does disclose a carrier – at 14,87, which has a component – at 14, which extends through the cap – at 48, and through the housing – at 12 – see for example figures 1-2. Therefore it would have been obvious to one of ordinary skill in

the art to take the device of Luin as modified by Bearden and add the carrier element of Jackes et al., so as to allow for the feeder device to be securely held in place during use.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Luin as modified by Bearden as applied to claim 14 above, and further in view of U.S. Patent No. 4,977,859 to Kilham. Luin as modified by Bearden does not disclose the seed catcher includes through openings to permit rainwater to escape from the dished area. Kilham does disclose the seed catcher – at 20, includes through openings – see figures 1-5, to permit rainwater to escape from the dished area – at 20. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Luin as modified by Bearden and add the through openings in the seed catcher of Kilham, so as to allow for the seed in the seed container to be preserved and not wasted.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Luin in view of Bearden and Jackes et al. Luin discloses a bird feeder comprising, a generally cylindrical housing – at 11, with divider portions – at 34, a cap – at 14, covering the top of the housing – see for example figures 1-2, a cylindrical coupler – at 24,28,29,31,35, having an upper end frictionally engaged with the bottom of the housing – see for example figures 1-2, and having dividers – at 32, therein separate from the housing divider portions – see figures 1-2, which define vertically segregated coupler chambers – see at 21 in figures 1-2, each separately aligned with an exit of the dividers of the housing – see for example figures 1-2 and 4, to direct seeds separately from each of the compartments to an individual feed opening – at 33, associated with each coupler chamber – see for example figures 1-2, and a seed catcher – at 22, connected to the lower end of the coupler – see figure 4, on which birds may perch to eat seeds exiting from the coupler openings – see for example figures 1-2 and 4. Luin does not disclose the housing is plastic.

Bearden does disclose the housing – at 19-22 is plastic – see for example column 4 lines 60-67. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Luin and add the housing being made of plastic of Bearden, so as to make the device lightweight yet durable for use outdoors. Luin further does not disclose the divider portions define a plurality of spiral compartments which extend continuously from a top of the housing to a bottom of the housing. Bearden does disclose an integrally formed spiral divider – at 23 and/or 24, the spiral divider positioned vertically in the housing – at 19-22, to divide the housing in at least two spiral compartments – see for example figures 2-5, which compartments extend continuously from adjacent the housing top to adjacent the housing bottom – see for example figure 2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Luin and add the spiral divider of Bearden, so as to allow for housing to be made into multiple equally proportioned chambers within the housing. Luin as modified by Bearden further discloses a carrier – at 36,37, for the bird feeder – see figures 1-2 of Luin, which extends above the cap and is connected to the coupler or the seed catcher to hang the bird feeder for support – see for example figures 1-2 of Luin. Luin as modified by Bearden does not disclose the carrier includes a component which extends through the cap and the housing. Jackes et al. does disclose a carrier – at 14,87, which has a component – at 14, which extends through the cap – at 48, and through the housing – at 12 – see for example figures 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Luin as modified by Bearden and add the carrier element of Jackes et al., so as to allow for the feeder device to be securely held in place during use.

Response to Arguments

3. Applicant's arguments with respect to claims 1-3 and 5-21 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DP

David Parsley
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PETER M. POON
SUPERVISORY PATENT EXAMINER

4/27/05